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and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re:

IRONCLAD PERFORMANCE WEAR  
CORPORATION, a California corporation,

Debtor and Debtor in Possession.

In re:

IRONCLAD PERFORMANCE WEAR  
CORPORATION, a Nevada corporation,

Debtor and Debtor in Possession.

☒ Affects both Debtors

☐ Affects Ironclad Performance Wear  
Corporation, a California corporation only

☐ Affects Ironclad Performance Wear  
Corporation, a Nevada corporation only

Lead Case No.: 1:17-bk-12408-MB  
Jointly administered with:  
1:17-bk-12409-MB  
Chapter 11 Cases

**DEBTORS' MOTION FOR AN ORDER: (1) APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; (2) APPROVING OF DEBTORS' ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND DETERMINING CURE AMOUNTS AND APPROVING OF DEBTORS' REJECTION OF THOSE UNEXPIRED LEASES AND EXECUTORY CONTRACTS WHICH ARE NOT ASSUMED AND ASSIGNED; (3) WAIVING THE 14-DAY STAY PERIODS SET FORTH IN BANKRUPTCY RULES 6004(h) AND 6006(d); AND (4) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES**

**[Declaration of Geoffrey Greulich Filed  
Concurrently Herewith]**

DATE: October 30, 2017  
TIME: 10:00 a.m.  
PLACE: Courtroom "303"  
21041 Burbank Blvd.  
Woodland Hills, CA

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1 Ironclad Performance Wear Corporation, a California corporation, and Ironclad  
2 Performance Wear Corporation, a Nevada corporation (collectively, the “Debtors”), the debtors  
3 and debtors-in-possession in the above-captioned Chapter 11 bankruptcy cases (collectively, the  
4 “Bankruptcy Cases”), hereby file this Motion (“Motion”) seeking an order of the Court  
5 approving the Debtors’ sale of substantially all of their assets to Radians Wareham Holding, Inc.  
6 (“Radians” or “Purchaser”) in accordance with the terms of the Asset Purchase Agreement  
7 (“APA”) attached as Exhibit “A” to the Declaration of Geoffrey Greulich filed on September 11,  
8 2017 as Docket Number 6 (the “Original Greulich Declaration”) or to the highest or otherwise  
9 best overbidder selected at the Auction (defined below).  
10

11 By way of this Motion, the Debtors are also seeking the Court’s approval of the Debtors’  
12 assumption and assignment to Purchaser (or the successful overbidder) of those unexpired leases  
13 and executory contracts that Purchaser (or the successful overbidder) wishes to assume (defined  
14 in the APA as the “Designated Contracts”). A schedule of all of the Debtors’ known executory  
15 contracts and unexpired leases (the “Contracts and Leases Schedule”), along with the Debtors’  
16 belief as to all outstanding cure amounts owing by the Debtors to the other parties to those  
17 executory contracts and unexpired leases (the “Cure Amounts”), is attached as Exhibit “1” to the  
18 concurrently filed Declaration of Geoffrey Greulich filed on October 9, 2017 as Docket Number  
19 94 (the “Current Greulich Declaration”).  
20  
21

22 Purchaser has not yet identified for the Debtors which of the Debtors’ executory contracts  
23 and unexpired leases that Purchaser desires to have assigned to it (*i.e.*, the “Designated  
24 Contracts”) if Purchaser is the winning bidder at the Auction (or if there is no Auction), and  
25 Purchaser is required to make that designation by one day prior to the sale closing (the  
26 “Closing”). If someone other than Purchaser is the successful bidder at the Auction, the Debtors  
27 will not know which of their executory contracts and unexpired leases the winning bidder will  
28



1 desire to have assigned to it until the winning bidder at the Auction makes that determination  
2 which the winning bidder will also be required to make by one day prior to the Closing.

3       As a result, by way of this Motion, the Debtors are seeking the Court's authority to  
4 assume and assign to Purchaser (or to a successful overbidder) all of the Debtors' executory  
5 contracts and unexpired leases that Purchaser (or a successful overbidder) wants to have assigned  
6 to it and to fix the required Cure Amounts that would need to be paid to the other parties to the  
7 executory contracts and unexpired leases to enable compliance with the provisions of Section  
8 365(b)(1)(A) of the Bankruptcy Code at the Cure Amounts set forth in the Contracts and Leases  
9 Schedule unless the other parties to the executory contracts and unexpired leases file a timely  
10 objection to this Motion and the Court determines that the required Cure Amount is different  
11 than the amount set forth in the Contracts and Leases Schedule. By way of this Motion, the  
12 Debtors are also seeking a determination by the Court that none of the other parties to the  
13 executory contracts and unexpired leases have suffered any actual pecuniary loss resulting from  
14 any default by the Debtors so that no further payments beyond the proposed Cure Amounts are  
15 required to enable compliance with the provisions of Section 365(b)(1)(B) of the Bankruptcy  
16 Code.

17       The APA was the result of extensive pre-bankruptcy negotiations and documentation  
18 between the Debtors and Purchaser. Under the APA, Purchaser has agreed to purchase the vast  
19 majority of the Debtors' assets (defined as the "Purchased Assets" (see Section 2.1(b) of the  
20 APA)) for the cash purchase price of \$20 million or \$15 million (see Section 2.2 of the APA)  
21 depending upon the occurrence of an event that is set forth in a letter agreement that is the  
22 subject of a motion to seal. The Debtors' assets that are not Purchased Assets are defined as the  
23 "Retained Assets" in Section 2.1(c) of the APA. It is possible that the event that would dictate  
24 whether Purchaser's opening bid at the Auction is \$15 million or \$20 million will not have been  
25  
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28

1 determined by the time of the Auction. All prospective overbidders are being kept apprised of  
2 this development. Prospective overbidders are NOT required to have their overbid be subject to  
3 the same occurrence of event set forth in the letter agreement as Purchaser. Prospective  
4 overbidders are welcome and encouraged not to make their bid subject to that occurrence of  
5 event. If the event that would dictate whether Purchaser's opening bid at the Auction is \$15  
6 million or \$20 million has not been determined by the time of the Auction, then unless Purchaser  
7 waives that contingency, the opening bid at the Auction by Purchaser will be \$15 million and the  
8 minimum initial overbid will need to be at least \$15,750,000.  
9

10 In order to insure that the highest price possible is paid for the Purchased Assets, the  
11 Debtors' proposed sale to Purchaser is subject to overbid at an auction ("Auction") to be held on  
12 October 30, 2017. The Debtors have retained the highly regarded investment bank of Craig-  
13 Hallum Capital Group LLC ("C-H") to market the Purchased Assets for overbid and to work  
14 with the Debtors to conduct the Auction in the event of one or more qualified overbidders. C-H  
15 is extremely familiar with the Debtors, the Debtors' business operations and the Purchased  
16 Assets as C-H spent months prior to the Debtors' bankruptcy filings attempting to find buyers of  
17 the Debtors' business and/or lenders to the Debtors as set forth in the Current Greulich  
18 Declaration. C-H has continued to market the Debtors' business/assets for overbid post-petition  
19 and will continue to do so through the Auction.  
20  
21

22 At a continued hearing held on September 25, 2017, the Court granted the Debtors'  
23 emergency motion to approve their proposed bidding procedures by order entered on September  
24 28, 2017 as Docket Number 71 (the "Bidding Procedures Order"). The Bidding Procedures  
25 Order was approved by the Debtors, Purchaser, and the Official Committee of Unsecured  
26 Creditors and Official Committee of Equity Holders that were appointed in these cases. The  
27 Bidding Procedures Order explains to prospective overbidders how a prospective overbidder  
28

1 becomes qualified to participate in the Auction and how the Auction would proceed in the event  
2 that there is one or more qualified overbidders. In addition, C-H has established an extensive  
3 data room for prospective overbidders to obtain diligence information, and the Debtors' senior  
4 management has made themselves available to meet with prospective overbidders. To assist in  
5 the overbid process, the Debtors' counsel prepared an asset purchase agreement template for  
6 prospective overbidders to use if they want, and has delivered that template to C-H to distribute  
7 to prospective overbidders.  
8

9       The location of the Auction will be determined after the number of qualified overbidders  
10 becomes known. The Debtors intend to seek the Court's approval of the sale of the Purchased  
11 Assets to Purchaser or a successful overbidder immediately following the completion of the  
12 Auction. If there are no qualified overbidders, the Debtors will proceed to request the Court to  
13 approve the Debtors' sale of the Purchased Assets and the Debtors' assumption and assignment  
14 of the Designated Contracts to Purchaser at the hearing to be held on October 30, 2017. If  
15 Purchaser is the winning bidder at the Auction (or if there are no qualified overbidders),  
16 Purchaser is required to close its purchase of the Purchased Assets within five days following the  
17 date upon which all of the conditions set forth in Article IX and Article X of the APA have been  
18 satisfied, including entry of the sale order by the Court. If a qualified overbidder is the winning  
19 bidder at the Auction, the winning bidder is required to close its purchase of the Purchased  
20 Assets within fourteen days following the entry of the sale order by the Court. A proposed draft  
21 of the sale order (which has been approved by Purchaser) is attached hereto as Exhibit "A" (the  
22 "Sale Order").  
23  
24

25       Given the Debtors' lack of liquidity and inability to access a sufficient amount of new  
26 funding to pay off Purchaser (who is also the Debtors' current senior secured creditor having  
27 acquired the Debtors' bank debt before the bankruptcy filings and provided post-petition  
28

1 financing), the Debtors have concluded that consummating a sale of the Purchased Assets for  
2 the most money possible is in the best interests of the Debtors' creditors (who are expected to  
3 be paid in full) and the Debtors' shareholders.

4       The Debtors urge all parties in interest and prospective overbidders to read the entire  
5 APA and all of its exhibits for a more complete description of the details of the proposed sale  
6 transaction to Purchaser, and the Debtors urge all parties in interest and prospective overbidders  
7 to read the Bidding Procedures Order to understand the details of the overbid process. As  
8 indicated above, the Debtors' business and their assets have been marketed for sale for a  
9 relatively extended period of time by C-H, and a number of interested parties have been  
10 conducting due diligence. The Debtors are confident that their assets will sell for the most  
11 money possible under the circumstances. Other than being the Debtors' senior secured creditor  
12 from having purchased pre-petition the Debtors' senior secured debt from the Debtors' pre-  
13 petition lender and from having provided post-petition financing to the Debtors, Purchaser is an  
14 independent third-party buyer with no connection to the Debtors or to any insiders or affiliates  
15 of the Debtors.<sup>1</sup> Purchaser has offered the highest price to date for the Purchased Assets, and  
16 the Debtors' proposed sale of the Purchased Assets to Purchaser is subject to overbid. The  
17 Debtors do not believe that any additional time is needed for the overbid process to insure that  
18 the highest price possible is paid for the Debtors' assets, and given the vulnerability of the  
19 Debtors' business from continuing to operate in chapter 11 for an extended period of time and  
20 the fact that if the Debtors were to continue in chapter 11 well beyond the Auction date the  
21 Debtors would need additional financing which is both not currently available and would serve  
22 to reduce the ultimate recovery for the Debtors' shareholders, the Debtors believe that it is  
23  
24  
25  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Purchaser is a competitor of the Debtors.

1 absolutely imperative that the Debtors consummate a sale of the Purchased Assets in the  
2 timeline provided in the Bidding Procedures Order.

3 Accordingly, for all of these reasons and the others set forth below in the annexed  
4 Memorandum of Points and Authorities and the Current Greulich Declaration, the Debtors  
5 respectfully request that the Court grant this Motion without delay to allow the Debtors to  
6 consummate their sale of the Purchased Assets to Purchaser (or to a successful overbidder) at  
7 the hearing on October 30, 2017, and immediately thereafter enter the Debtors' proposed Sale  
8 Order (subject to any changes agreed to by the Debtors and a successful overbidder in the event  
9 that someone other than Purchaser is the successful bidder at the Auction). Prior to the hearing  
10 on this Motion but after the deadline for prospective overbidders to become qualified  
11 overbidders, the Debtors will file a declaration of the principal of C-H (Steven Rickman)  
12 handling this transaction providing the Court with a status update of the sale and overbid  
13 process.  
14  
15

16 **WHEREFORE**, the Debtors respectfully request that the Court enter the Sale Order  
17 and, among other things:

18 1. find that notice of this Motion was proper, timely, adequate, appropriate and  
19 sufficient and that no other or further notice of this Motion, the hearing on this Motion, or the  
20 assumption and assignment of the Designated Contracts is or shall be required;  
21

22 2. find good, sufficient, and sound business purposes and justification and  
23 compelling circumstances for the Debtors' sale of the Purchased Assets and assumption and  
24 assignment of the Designated Contracts to Purchaser (or to a successful overbidder) prior to, and  
25 outside of, a plan of reorganization;  
26  
27  
28

1           3.       find that the APA (or the asset purchase agreement with the successful  
2 overbidder)<sup>2</sup> was negotiated, proposed and entered into without collusion, in good faith, and  
3 from arm's-length bargaining positions and that Purchaser (or a successful overbidder) is acting  
4 as a good faith purchaser and is, accordingly, entitled to the protections set forth in section  
5 363(m) of the Bankruptcy Code;

6           4.       find the consideration provided by Purchaser (or a successful overbidder) for the  
7 Purchased Assets: (i) to be fair and reasonable, (ii) to be the highest or otherwise best offer for  
8 the Purchased Assets that was received by the Debtors in accordance with the Bidding  
9 Procedures Order, (iii) provides a greater recovery for the Debtors' creditors and shareholders  
10 than would be provided by any other practical available alternative, and (iv) constitutes  
11 reasonably equivalent value and fair consideration under the circumstances of these cases, and  
12 find that prospective overbidders were provided an adequate opportunity to participate in the  
13 Auction and to submit a higher or otherwise better bid;

14           5.       find that one or more of the standards set forth in 11 U.S.C. § 363(f)(1)-(5) has  
15 been satisfied for selling the Purchased Assets free and clear of all "Encumbrances" (as defined  
16 in the Sale Order);

17           6.       find that approval of the APA and the consummation of the Debtors' sale of the  
18 Purchased Assets and the Debtors' assumption and assignment of the Designated Contracts to  
19 Purchaser (or to a successful overbidder) are in the best interests of the Debtors' estates;

20           7.       authorize the Debtors to sell the Purchased Assets to Purchaser (or to a successful  
21 overbidder) free and clear of all Encumbrances with all liens existing against the Purchased  
22 Assets at the time of the Closing to attach to the net sale proceeds in the same order of priority,

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<sup>2</sup> References herein to "APA" shall in each case include the successful overbidder's form of asset purchase agreement which shall be submitted to the Court for approval.

1 and with the same validity, force and effect, as such liens had against the Purchased Assets  
2 immediately before the Closing, subject to any rights, claims and defenses of the Debtors and  
3 their bankruptcy estates;

4           8.       determine that (i) with the payment of the Cure Amounts (defined below), the  
5 Debtors and Purchaser (or a successful overbidder), as applicable, have cured, or have provided  
6 adequate assurance of cure, of any default existing or occurring prior to the Closing under any of  
7 the Designated Contracts, and Purchaser (or a successful overbidder) has provided adequate  
8 assurance of its future performance of and under the Designated Contracts, (ii) the provisions of  
9 Section 365(b)(1)(A) of the Bankruptcy Code at the Cure Amounts set forth in the Contracts and  
10 Leases Schedule (defined below) have been satisfied unless the other parties to the executory  
11 contracts and unexpired leases file a timely objection to this Motion and the Court determines  
12 that the required Cure Amount is different than the amount set forth in the Contracts and Leases  
13 Schedule, and (iii) none of the other parties to the executory contracts and unexpired leases have  
14 suffered any actual pecuniary loss resulting from any default by the Debtors so that no further  
15 payments beyond the proposed Cure Amounts are required to enable compliance with the  
16 provisions of Section 365(b)(1)(B) of the Bankruptcy Code.

17           9.       determine that the Debtors' assumption and assignment to Purchaser, and  
18 Purchaser's assumption on the terms set forth in the APA, of the Designated Contracts is  
19 approved, and the requirements for assumption and assignment are deemed satisfied and that the  
20 Debtors are authorized in accordance with 11 U.S.C. §§ 105(a) and 365;

21           10.      approve (effective as of the Closing Date) the Debtors' rejection of all of the  
22 Debtors' remaining unexpired leases and executory contracts which are not assumed and  
23 assigned to Purchaser (or a successful overbidder);  
24  
25  
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27  
28

1 11. in the event Radians is not the winning bidder at the Auction, authorize the  
2 Debtors to repay in full all of their pre-petition and post-petition obligations to Radians from the  
3 proceeds from the sale to the successful overbidder upon the closing of that sale;

4 12. waive the 14-day stay periods set forth in Bankruptcy Rules 6004(h) and 6006(d);  
5 and  
6

7 13. grant such other and further relief as the Court deems just and proper under the  
8 circumstances of these cases.

9 Dated: October 9, 2017

IRONCLAD PERFORAMNCE WEAR  
CORPORATION, *et al.*

11 By: /s/ Ron Bender  
12 RON BENDER  
13 MONICA Y. KIM  
14 KRIKOR J. MESHEFEJIAN  
15 LEVENE, NEALE, BENDER,  
16 YOO & BRILL L.L.P.  
17 Proposed Attorneys for Debtors and  
18 Debtors in Possession  
19  
20  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF JURISDICTION AND VENUE**

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of the Debtors' bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (M), (N) and (O). Venue of the Bankruptcy Cases is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested in this Motion are (i) Sections 105(a) and 363(b), (f), (k), (l) and (m), 365 of Title 11 of the United States Code (the "Bankruptcy Code"), (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014 of the Federal Rules of Bankruptcy Procedure, and (iii) Local Bankruptcy Rules 6004-1 and 9013-1.

**II.**

**STATEMENT OF FACTS**

**A. Brief Description Of The Debtors And Their Businesses.**

On September 8, 2017 ("Petition Date"), Ironclad Performance Wear Corporation, a California corporation ("Ironclad California"), and its parent corporation Ironclad Performance Wear Corporation, a Nevada corporation ("Ironclad Nevada"), each filed a Voluntary Petition for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, Ironclad California and Ironclad Nevada (collectively, the "Debtors" or "Ironclad") have operated their businesses and managed their affairs as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. With the Court's approval, the Debtors two chapter 11 cases are being jointly administered. Other than owning all of the shares in Ironclad California, Ironclad Nevada has no business. All operations of the Debtors effectively function through Ironclad California.

1 The Debtors are a leading, technology-focused developer and manufacturer of high-  
2 performance task-specific gloves and apparel for the “industrial athlete” in a variety of end  
3 markets, including construction, manufacturing, oil and gas (“O&G”), automotive, the sporting  
4 goods, military, police, fire, and first-responder. The Debtors’ business is headquartered in  
5 Farmers Branch, Texas. Ironclad Nevada is publicly-traded with its common stock quoted on the  
6 OTC Markets under the symbol “ICPW”. As of April 7, 2017, Ironclad Nevada had 85,646,354  
7 shares of common stock, par value \$0.001 per share, issued and outstanding. As of August 30,  
8 2017, the Debtors had approximately 41 full time employees, with 9 of these employees who  
9 work overseas.  
10

11 Ironclad was founded in 1998 by Ed Jaeger. Mr. Jaeger was inspired to build gloves that  
12 offered protection and performance without sacrificing one for the other. From the beginning,  
13 Ironclad built gloves using materials that offered excellent fit to make them an extension of the  
14 hand and to make jobs easier for the “industrial athlete”. By 2006, Ironclad offered 35 different  
15 task-specific glove types for people wearing gloves as part of their daily jobs.  
16

17 In 2008, the Debtors launched the KONG (King of Oil ‘N’ Gas) line to address the high  
18 number of hand injuries in the O&G field. By 2010, the KONG line was comprised of 46  
19 different gloves. Additionally, Ironclad expanded its presence in the retail and non-professional  
20 markets with the launch of the EXO brand in June 2015. EXO offers lower cost gloves for  
21 automotive, DIY, and outdoor sporting applications. Ironclad offers 30 different EXO glove  
22 types.  
23

24 Ironclad’s task-specific technical glove products are specially designed for individual  
25 user groups. Ironclad currently offers over 160 distinct types of gloves for a variety of markets,  
26 including industrial, construction, DIY, carpentry, machining, package handling, plumbing,  
27 welding, roofing, O&G, mechanics, hunting, and gardening. Products come in a multitude of  
28

1 colors and cater to the specific demands and requirements of the users based on ease of motion,  
2 grip, water and chemical resistance, visibility, and protection from abrasions, cuts, flames,  
3 impacts, temperature, and vibration. Since inception, Ironclad has employed an internal research  
4 and development (“R&D”) department responsible for identifying and creating new products and  
5 applications, and improving and enhancing existing products. Ironclad is continually evaluating  
6 new base materials for gloves, and grip is another key area of focus for R&D. Ironclad often  
7 partners with industry-leading organizations to develop new products. Ironclad has 13 U.S.  
8 patents issued and 11 foreign patents, as well as five pending U.S. patent applications and several  
9 pending foreign patent applications. Ironclad also uses trademarks to strengthen and protect its  
10 recognizable brand names. Ironclad owns 52 registered U.S. trademarks, 39 registered  
11 international trademarks, and 13 and 43 trademarks pending in the U.S. and internationally,  
12 respectively.  
13  
14

15 Ironclad currently sells its product through approximately 10,000 outlets for professional  
16 tradesmen as well as “Big Box”, hardware, auto parts, and sporting goods retailers. The sales  
17 force is organized by 3 business segments: Industrial, Retail, and International. Glove products  
18 are currently manufactured by multiple suppliers operating in China, Bangladesh, Cambodia,  
19 Vietnam and Indonesia.  
20

21 **B. Events Leading To The Filing Of The Debtors’ Bankruptcies And The Debtors’**  
22 **Chapter 11 Goals.**

23 Despite the development and success of the Debtors’ products over the years, the  
24 Debtors’ revenue and cash flow from operations have been insufficient to support their current  
25 business operations as well as their continued growth. There have been many reasons for this  
26 including heavy competition, loss of a major international distributor, incomplete and/or  
27 ineffective expansion and distribution of all of their product lines and development of new  
28

1 customers, and higher than anticipated production, manufacturing and warehousing costs. In  
2 addition, it was discovered in early 2017 that under prior management, the Debtors had failed to  
3 provide materially complete and correct financial statements as required under their Loan  
4 Documents (defined below) to their primary secured lender for the fiscal years ended December  
5 31, 2015 and 2016, and for the fiscal quarters ended March 31, June 30, September 30, 2016 and  
6 March 31, 2017. As a result of this discovery, the Debtors' then chief executive officer and other  
7 officers were terminated, and L. Geoffrey Greulich assumed the position of the Debtors' new  
8 chief executive officer effective July 6, 2017. Prior to assuming this position, Mr. Greulich had  
9 no prior connections or relationship with the Debtors as an insider, equity holder or otherwise.  
10 As a Senior Advisor, Operations at Corridor Capital, LLC where he leads operations through  
11 portfolio engagement as well as conducting due diligence, Mr. Greulich was highly qualified to  
12 serve as the Debtors' new chief executive officer. Persons or parties interested in obtaining  
13 specific historical financial history of the Debtors should review the public filings made by the  
14 Debtors with the Securities and Exchange Commission.

17 The Debtors filed their bankruptcy cases to consummate a sale of substantially all of their  
18 assets (excluding cash and causes of action) for the most money possible. Just prior to their  
19 bankruptcy filings, the Debtors entered into an asset purchase agreement ("APA") with the  
20 Debtors' current secured creditor, Radians Wareham Holdings, Inc. ("Radians" or "Purchaser")  
21 or its affiliate/designee, for a cash purchase price of \$20 million or \$15 million, subject to an  
22 overbid process. Purchaser will be paying a cash purchase price of either \$15 million or \$20  
23 million depending upon the occurrence of an event which is sensitive and the letter agreement  
24 describing such event is the subject of a motion to file under seal. It should be noted that the  
25 Debtors believe the total debt in these cases (both secured and unsecured combined along with  
26 post-petition administrative claims) is or will be in the range of approximately \$8-\$10 million,  
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1 which means that all creditors are expected to be paid in full with there being a substantial  
2 distribution to the shareholders of the parent company, which is a publicly traded company.

3 The Debtors' business was actively marketed for sale for an extended period prior to the  
4 Debtors' bankruptcy filings by a qualified investment banker. Prospective buyers had the ability  
5 to purchase assets or equity. While a number of prospective buyers expressed and continued to  
6 express interest in possibly purchasing the Debtors' assets or stock, the Debtors ran out of time  
7 to continue with their pre-bankruptcy marketing process because (i) the Debtors were out of  
8 funds, (ii) the Debtors could not continue to operate without both access to their own cash  
9 receipts as well as receipt of additional financing, and (iii) Purchaser (which is also the Debtors'  
10 secured creditor having purchased the Debtors' pre-bankruptcy secured bank debt) had exercised  
11 its secured creditor rights and was sweeping all of the Debtors' cash (although by agreement  
12 certain of the funds which were subject to the authorized sweep were re-advanced to the Debtors  
13 along with the additional advance of funds by Purchaser to enable the Debtors' continued  
14 business operations prior to the Petition Date) and was no longer willing to continue to forbear or  
15 advance additional needed financing to the Debtors absent a global resolution with the Debtors  
16 which was accomplished with the APA and the DIP financing agreement the Debtors entered  
17 into with Purchaser which is the subject of a separate emergency motion.

18 The purchase offer provided to the Debtors by Purchaser was determined by the Board to  
19 be the best offer the Debtors had received by the Petition Date, and Purchaser was ready to  
20 proceed with its purchase and lend the Debtors sufficient funds to enable the Debtors to operate  
21 their business through an Auction to take place in late October, 2017 with a sale closing to occur  
22 shortly thereafter. Purchaser was also willing to permit the Debtors to proceed with a robust  
23 post-bankruptcy marketing and hopeful overbid process to insure that the highest and best price  
24 is paid for the Debtors' assets. Given the breadth of the Debtors' pre-bankruptcy marketing  
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1 process and the fact that the Debtors' pre-bankruptcy investment banker (who is already very  
2 familiar with the various prospective overbidders) will be serving as the Debtors' post-  
3 bankruptcy investment banker and leading the overbid sale process, and the fact that the likely  
4 overbidders are already deep into the due diligence process, the Debtors are confident that  
5 providing prospective overbidders with approximately six weeks to decide whether to participate  
6 in the Auction is a sufficient amount of time for the Debtors to achieve the highest and best price  
7 for their assets. Also, and very importantly, the Debtors' financial needs expand significantly the  
8 last two months of the year so if the Debtors are required to continue to operate their business  
9 through the end of the year or significantly beyond October 31, 2017, the Debtors may need to  
10 borrow additional money which could result in substantially reducing the ultimate recovery for  
11 the Debtors' shareholders. It is also not clear at this time that any such additional financing  
12 would be available to the Debtors in any event. It is for this reason that it is very important that  
13 the Debtors' be authorized to implement their proposed sale timeline.  
14  
15

16 **C. The Asset Sale Process.**

17 At a continued hearing held on September 25, 2017, the Court granted the Debtors' bid  
18 procedures motion by order entered on September 28, 2017 as Docket Number 71 (the "Bidding  
19 Procedures Order"). The Bidding Procedures Order was approved by the Debtors, Purchaser,  
20 and the Official Committee of Unsecured Creditors and Official Committee of Equity Holders  
21 that were appointed in these cases. The Bidding Procedures Order explains to prospective  
22 overbidders how a prospective overbidder becomes qualified to participate in the Auction and  
23 how the Auction would proceed in the event that there is one or more qualified overbidders. In  
24 addition, C-H has established an extensive data room for prospective overbidders to obtain  
25 diligence information, and the Debtors' senior management has made themselves available to  
26 meet with prospective overbidders. To assist in the overbid process, the Debtors' counsel  
27  
28

1 prepared an asset purchase agreement template for prospective overbidders to use if they want,  
2 and has delivered that template to C-H to distribute to prospective overbidders.

3       The location of the Auction will be determined after the number of qualified overbidders  
4 becomes known. The Debtors intend to seek the Court's approval of the sale of the Purchased  
5 Assets to Purchaser or a successful overbidder immediately following the completion of the  
6 Auction. If there are no qualified overbidders, the Debtors will proceed to request the Court to  
7 approve the Debtors' sale of the Purchased Assets and the Debtors' assumption and assignment  
8 of the Designated Contracts to Purchaser at the hearing to be held on October 30, 2017. If  
9 Purchaser is the winning bidder at the Auction (or if there are no qualified overbidders),  
10 Purchaser is required to close its purchase of the Purchased Assets within five days following the  
11 date upon which all of the conditions set forth in Article IX and Article X of the APA have been  
12 satisfied, including entry of the Sale Order by the Court. If a qualified overbidder is the winning  
13 bidder at the Auction, the winning bidder is required to close its purchase of the Purchased  
14 Assets within fourteen days following the entry of the sale order by the Court. A proposed draft  
15 of the sale order (which has been approved by Purchaser) is attached hereto as Exhibit "A" (the  
16 "Sale Order").

17  
18  
19 **D.     The APA.**

20       The APA was the result of extensive pre-bankruptcy negotiations and documentation  
21 between the Debtors and Purchaser. Under the APA, Purchaser has agreed to purchase the vast  
22 majority of the Debtors' assets (defined as the "Purchased Assets" (see Section 2.1(b) of the  
23 APA)) for the cash purchase price of \$20 million or \$15 million (see Section 2.2 of the APA)  
24 depending upon the occurrence of an event that is described in a letter agreement that is the  
25 subject of a motion to file under seal. The Debtors' assets that are not being purchased by  
26 Purchaser are defined as the "Retained Assets" in Section 2.1(c) of the APA. The liabilities to be  
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1 assumed by Purchaser (the “Assumed Liabilities”) are described in Section 2.4(a) of the APA.  
2 The Closing if Purchaser is the winning bidder at the Auction or if there is no Auction is  
3 scheduled to take place within five business days following the entry of the Sale Order (see  
4 Section 3.1 of the APA). Purchaser has provided a \$1 million deposit which is being held in a  
5 trust account by the Debtors’ counsel (see Section 2.2 of the APA). If Purchaser is the winning  
6 bidder at the Auction (or if there is no Auction), at the Closing Purchaser will pay its cash  
7 purchase (of either \$15 million or \$20 million if there is no Auction or whatever the winning bid  
8 is if there is an Auction) less the \$1 million deposit less the outstanding amount of the secured  
9 debt owed to Purchaser at the time of the Closing (see Section 2.2 of the APA). At the time of  
10 the Debtors’ bankruptcy filings, Purchaser’s outstanding secured debt was in the amount of  
11 approximately \$3.5 million. The Debtors have already borrowed a total of \$1.1 million post-  
12 petition from Purchaser, and the Debtors expect to borrow an additional approximately \$400,000  
13 post-petition from Purchaser. This would mean that Purchaser would be owed approximately \$5  
14 million by the time of the Closing on account of Purchaser’s secured debt. Purchaser agreed to  
15 lend the Debtors a total of up to \$2 million post-petition. In the event that Purchaser is not the  
16 winning bidder, the Debtors are obligated to repay their secured debt to Purchaser in full from  
17 the proceeds of the sale to the successful overbidder upon closing of the sale. Pursuant to  
18 Section 7.1 of the APA, Purchaser is required to identify one business day prior to the “Qualified  
19 Bid Determination Deadline” (which will be October 24, 2017) a list of all of the Debtors’  
20 employees who will be offered employment by Purchaser. All of the Debtors’ employees who  
21 are offered and accept employment with Purchaser are defined as the “Transferred Employees”.  
22 Pursuant to Section 7.1 of the APA, Purchaser (if it is the winning bidder at the Auction or if  
23 there is no Auction) has agreed to make a severance payment to each of the Debtors’ employees  
24 who are not offered employment by Purchaser, other than the Debtors’ officers and any  
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1 employee subject to an employee retention agreement, at comparable terms to their then  
2 employment with the Debtors, with each such severance payment to be consistent with the most  
3 generous current severance policy of Purchaser and/or any of its Affiliates for similarly situated  
4 employees. Purchaser will not owe any severance payment to any of the Debtors' employees  
5 who are offered employment by Purchaser at comparable terms to their then employment with  
6 the Debtors but who do not accept their offer of employment. As indicated in Section 2.1(b)(vi)  
7 of the APA, Purchaser will have the right to designate which of the Debtors' executory contracts  
8 and unexpired leases that Purchaser wishes to assume ("Designated Contracts"). Pursuant to  
9 Section 2.4(a)(ii) of the APA, the payment of all Cure Amounts will be the responsibility of  
10 Purchaser. Purchaser has not yet provided the Debtors with a preliminary list of the Designated  
11 Contracts. Purchaser is required to make its decision at least one business day prior to the  
12 Closing. This issue is discussed more below.  
13  
14

15 **E. The Final DIP and Cash Collateral Order.**

16 On October 6, 2017, the Court entered the *Final Order: (I) Authorizing The Debtors To*  
17 *(A) Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362 And 364, And (B)*  
18 *Utilize Cash Collateral Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364; (II) Granting*  
19 *Adequate Protection Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364; And (III) Granting*  
20 *Related Relief* (the "DIP Order"). Nothing in this Motion or any order thereon shall be construed  
21 to impair or limit these rights granted to the Official Committee of Equity Holders and the  
22 Official Committee of Unsecured Creditors in the DIP Order.  
23

24 **III.**

25 **DISCUSSION AND AUTHORITIES**

26 **A. The Bankruptcy Court Should Authorize the Debtors to Sell the Purchased Assets to**  
27 **Purchaser (Or a Successful Overbidder) in Accordance with the Terms of the APA.**  
28

1 Section 363(b) of the Bankruptcy Code provides that a debtor “after notice and a hearing,  
2 may use, sell or lease, other than in the ordinary course of business, property of the estate.” To  
3 approve a use, sale or lease of property other than in the ordinary course of business, the court  
4 must find “some articulated business justification.” See, e.g., In re Martin (Myers v. Martin), 91  
5 F.3d 389, 395 (3d Cir. 1996) citing In re Schipper (Fulton State Bank v. Schipper), 933 F.2d 513,  
6 515 (7th Cir. 1991); Comm. of Equity SEC Holders v. Lionel Corp. (In re Lionel Corp.), 722  
7 F.2d 1063, 1070 (2d Cir. 1983); In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d  
8 Cir. 1986) (implicitly adopting the “sound business judgment” test of Lionel Corp. and requiring  
9 good faith); In re Delaware and Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991) (concluding that  
10 the Third Circuit adopted the “sound business judgment” test in the Abbotts Dairies decision).  
11

12 In the Ninth Circuit, “cause” exists for authorizing a sale of estate assets if it is in the best  
13 interest of the estate, and a business justification exists for authorizing the sale. In re  
14 Huntington, Ltd., 654 F.2d 578 (9th Cir. 1981); In re Walter, 83 B.R. 14, 19-20 (9th Cir. B.A.P.  
15 1988). The Ninth Circuit has also held that section 363 allows the sale of substantially all assets  
16 of a debtor’s bankruptcy estate after notice and a hearing. In re Qintex Entertainment, Inc., 950  
17 F.2d 1492 (9th Cir. 1991).  
18

19 In determining whether a sale satisfies the business judgment standard, courts have held  
20 that: (1) there be a sound business reason for the sale; (2) accurate and reasonable notice of the  
21 sale be given to interested persons; (3) the sale yield an adequate price (i.e., one that is fair and  
22 reasonable); and (4) the parties to the sale have acted in good faith. Titusville Country Club v.  
23 Pennbank (In re Titusville Country Club), 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); see also,  
24 In re Walter, 83 B.R. at 19-20.  
25

26 The Debtors submit that their proposed sale of the Purchased Assets to Purchaser (or a  
27 successful overbidder) clearly comports with each of these four criteria, is consistent with the  
28

1 terms of the APA, and demonstrates that the Debtors' business judgment to proceed with the  
2 proposed sale of the Purchased Assets to Purchaser (or a successful overbidder) in accordance  
3 with the terms of the APA is sound.

4  
5 **1. Sound Business Purpose.**

6 There must be some articulated business justification, other than appeasement of major  
7 creditors, for using, selling or leasing property out of the ordinary course of business before the  
8 bankruptcy court may order such disposition under Section 363(b). In re Lionel Corp., 722 F.2d  
9 at 1070. The Ninth Circuit Bankruptcy Appellate Panel in Walter v. Sunwest Bank (In re  
10 Walter), 83 B.R. 14, 19 (9th Cir. B.A.P. 1988) has adopted a flexible case-by-case test to  
11 determine whether the business purpose for a proposed sale justifies disposition of property of  
12 the estate under Section 363(b). In Walter, the Bankruptcy Appellate Panel, adopting the  
13 reasoning of the Fifth Circuit in In re Continental Airlines, Inc., 780 F.2d 1223 (5th Cir. 1986)  
14 and the Second Circuit in In re Lionel Corp., *supra*, articulated the standard to be applied under  
15 Section 363(b) as follows:  
16

17 Whether the proffered business justification is sufficient depends on the case. As  
18 the Second Circuit held in Lionel, the bankruptcy judge should consider all  
19 salient factors pertaining to the proceeding and, accordingly, act to further the  
20 diverse interests of the Debtor, creditors and equity holders, alike. He might, for  
21 example, look to such relevant facts as the proportionate value of the asset to the  
22 estate as a whole, the amount of elapsed time since the filing, the likelihood that  
23 a plan of reorganization will be proposed and confirmed in the near future, the  
24 effect of the proposed disposition on future plans of reorganization, the proceeds  
25 to be obtained from the disposition vis-a-vis any appraisals of the property,  
26 which of the alternatives of use, sale or lease the proposal envisions and, most  
27 importantly perhaps, whether the asset is increasing or decreasing in value. This  
28 list is not intended to be exclusive, but merely to provide guidance to the  
bankruptcy judge.

In Re Walter, 83 B.R. at 19-20, *citing* In re Continental Air Lines, Inc., 780 F.2d 1223,  
1226 (5th Cir. 1986).

The facts pertaining to the Debtors' proposed sale of the Purchased Assets to Purchaser

1 (or a successful overbidder) clearly substantiate the Debtors' business decision that such  
2 contemplated sale serves the best interests of the Debtors' estates, their creditors and  
3 shareholders and merits the approval of the Court.

4 For all of the reasons explained above, the Debtors are not able to continue to sustain  
5 their business operations without the infusion of additional financing or working capital because  
6 the Debtors are in default to Purchaser and Purchaser has made clear that it is not willing to be  
7 the Debtors' long-term lender. Prior to the Debtors' bankruptcy filings, the Debtors were not  
8 able to locate any replacement financing except under prohibitively expensive terms. As a result,  
9 the only way for the Debtors to maximize the value of their assets/business is for the Debtors to  
10 consummate an expedited sale of their assets/business. The Debtors engaged in a comprehensive  
11 pre-petition marketing process over a period of several months using a highly regarded  
12 investment bank in C-H. The Debtors are confident that their proposed asset sale to Purchaser  
13 (subject to overbid) is the best option available to the Debtors to maximize the value of their  
14 assets and recovery for their creditors and shareholders. Purchaser's stalking horse bid was the  
15 best pre-petition offer the Debtors received, and Purchaser has enabled the Debtors to engage in  
16 a comprehensive post-petition marketing process in an effort to locate prospective overbidders to  
17 participate in the Auction. Given the fact that a number of prospective buyers had already  
18 commenced due diligence prior to the Debtors' bankruptcy filings, the Debtors are confident that  
19 the post-petition marketing/overbid process is sufficient to enable the Debtors to sell their  
20 business/assets for the most money possible under the circumstances. The Debtors therefore  
21 submit that their proposed asset sale is justified by sound business purposes, satisfying the first  
22 requirement for a sale under Section 363(b) of the Bankruptcy Code.

23  
24  
25  
26 **2. Accurate and Reasonable Notice.**

27 In connection with a proposed sale under Section 363 of the Bankruptcy Code, "four  
28

1 pieces of information must be presented to the creditors. The notice should: place all parties on  
2 notice that the debtor is selling its business; disclose accurately the full terms of the sale; explain  
3 the effect of the sale as terminating the debtor's ability to continue in business; and explain why  
4 the proposed price is reasonable and why the sale is in the best interest of the estate." In re  
5 Delaware & Hudson Railway Co., 124 B.R. 169, 180 (D. Del. 1991). A notice is sufficient if it  
6 includes the terms and conditions of the sale and if it states the time for filing objections. In re  
7 Karpe, 84 B.R. 926, 930 (Bankr. M.D. Pa. 1988). The purpose of the notice is to provide an  
8 opportunity for objections and hearing before the court if there are objections. Id.

9  
10 In accordance with the Court's instructions, on September 15, 2017, the Debtors served  
11 by federal express a notice of the status and developments of these cases and the impending sale  
12 process on all known creditors and shareholders. That notice was filed as Docket Number 44.  
13 As explained above, the Bidding Procedures Order was entered by the Court and has been  
14 provided to all known prospective overbidders by C-H. In connection with this Motion, the  
15 Debtors will serve a notice of the sale on all known creditors and shareholders.

16  
17 The Debtors submit that the foregoing satisfies the requirements of the APA and of  
18 Bankruptcy Rules 6004(a) and (c), which provide as follows:

19  
20 "(a) ... Notice of a proposed ... sale ... of property ... not in the ordinary course  
21 of business shall be given pursuant to Rule 2002(a)(2),(c)(1),(i) and (k) ...  
22 (c) ... A motion for authority to sell property free and clear of liens or other  
23 interests shall be made in accordance with Rule 9014 and shall be served on  
24 the parties who have liens or other interests in the property to be sold. The  
25 notice required by subdivision (a) of this rule shall include the date of the  
26 hearing on the motion and the time within which objections may be filed and  
27 served on the debtor in possession..."

28 Fed. R. Bankr. P. 6004(a)(c).

### 29 **3. Fair and Reasonable Price.**

30 In order to be approved under Section 363(b) of the Bankruptcy Code, the purchase price  
31 must be fair and reasonable. Coastal Indus., Inc. v. U.S. Internal Revenue Service (In re Coastal

1 Indus., Inc.), 63 B.R. 361, 368 (Bankr. N.D. Ohio 1986). Several courts have held that “fair  
2 value” is given for property in a bankruptcy sale when at least 75% of the appraised value of  
3 such property is paid. See In re Karpe, 84 B.R. at 933; In re Abbotts Dairies of Pennsylvania,  
4 Inc., 788 F.2d 143, 149 (3d Cir. 1986); Willemain v. Kivitz, 764 F.2d 1019 (4th Cir. 1985); In re  
5 Snyder, 74 B.R. 872, 878 (Bankr. E.D. Pa. 1987); In re The Seychelles, Partnership and Genius  
6 Corp. v. Banyan Corp., 32 B.R. 708 (N.D. Tex. 1983). However, the Debtors also realize that  
7 “[their] main responsibility, and the primary concern of the bankruptcy court, is the  
8 maximization of the value of the asset sold.” In re Integrated Resources, Inc., 135 B.R. 746, 750  
9 (Bankr. S.D.N.Y. 1992), *aff’d*, 147 B.R. 650 (S.D.N.Y. 1992). “It is a well-established principle  
10 of bankruptcy law that the objective of bankruptcy rules and the [debtor’s] duty with respect to  
11 such sales is to obtain the highest price or greatest overall benefit possible for the estate.” In re  
12 Atlanta Packaging Products, Inc., 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988); see also In re Wilde  
13 Horse Enterprises, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) (“In any sale of estate assets, the  
14 ultimate purpose is to obtain the highest price for the property sold”).  
15  
16

17 The pre-petition marketing and sale process undertaken by C-H and the Debtors was  
18 designed to insure that the highest price possible was obtained for the Purchased Assets, and the  
19 offer submitted by Purchaser which is serving as the stalking horse bid was the highest and best  
20 pre-petition offer the Debtors received. The post-petition overbid marketing process that the  
21 Debtors are undertaking in accordance with the Bidding Procedures Order will insure that under  
22 the circumstances the highest and best price is paid for the Purchased Assets and that purchase  
23 price will necessarily will be equal to the current fair market value of the Purchased Assets.  
24

#### 25 **4. Good Faith.**

26 When a bankruptcy court authorizes a sale of assets pursuant to Section 363(b)(1), it is  
27 required to make a finding with respect to the “good faith” of Purchaser. In re Abbotts Dairies,  
28

788 F.2d at 149. Such a procedure ensures that Section 363(b)(1) will not be employed to circumvent the creditor protections of Chapter 11, and as such, it mirrors the requirement of Section 1129, that the Bankruptcy Court independently scrutinizes the debtor's reorganization plan and makes a finding that it has been proposed in good faith. Id. at 150.

"Good faith" encompasses fair value, and further speaks to the integrity of the transaction. In re Wilde Horse Enterprises, 136 B.R. at 842. With respect to the debtor's conduct in conjunction with the sale, the good faith requirement "focuses principally on the element of special treatment of the Debtor's insiders in the sale transaction." See In re Industrial Valley Refrig. and Air Cond. Supplies, Inc., 77 B.R. 15, 17 (Bankr. E.D. Pa. 1987). With respect to the buyer's conduct, this Court should consider whether there is any evidence of "fraud, collusion between the purchaser and other bidders or the [debtor], or an attempt to take grossly unfair advantage of other bidders." In re Abbotts Dairies, 788 F.2d at 147, In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978); In re Wilde Horse Enterprises, Inc., 136 B.R. at 842; In re Alpha Industries, Inc., 84 B.R. 703, 706 (Bankr. D. Mont. 1988). In short, "[l]ack of good faith is generally determined by fraudulent conduct during the sale proceedings." In re Apex Oil Co., 92 B.R. 847, 869 (Bankr. E.D. Mo. 1988), *citing* In re Exennium, Inc., 715 F.2d 1401, 1404-05 (9th Cir. 1983). See also In re M Capital Corp., 290 B.R. 743 (B.A.P. 9<sup>th</sup> Circuit, 2003).

In In re Filtercorp, Inc., 163 F.3d 570 (9th Cir. 1998), the Ninth Circuit set forth the following test for determining whether a buyer is a good faith purchaser:

A good faith buyer "is one who buys 'in good faith' and 'for value.'" [citations omitted.] [L]ack of good faith is [typically] shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" [citations omitted.]

Filtercorp, 163 F.3d at 577.

1 The Ninth Circuit made clear in Filtercorp that this standard for determining good faith is  
2 applicable even when the buyer is an insider.

3 Neither Purchaser nor any of Purchaser's representatives or affiliates is an "insider" of  
4 the Debtors. The Debtors are not aware of any insider who is contemplating being a potential  
5 overbidder. The Debtors are not aware of any fraud, collusion or attempt to take unfair  
6 advantage of other bidders. Additionally, the APA was intensively negotiated at arm's length  
7 with all parties involved acting in good faith. Based on the foregoing, and a declaration to be  
8 submitted by Purchaser describing its good-faith conduct throughout the sale process, the  
9 Debtors submit that the Court should find that Purchaser (or a successful overbidder) constitutes  
10 a good faith purchaser entitled to all of the protections afforded by Section 363(m) of the  
11 Bankruptcy Code.  
12  
13  
14

15 **B. Section 363(f) of the Bankruptcy Code Permits the Debtors' Sale of the Purchased**  
16 **Assets to Purchaser to Be Free and Clear of Any and All Liens (as Defined in the**  
17 **APA).**

18 Section 363(f) of the Bankruptcy Code provides, in relevant part, as follows:  
19

20 The trustee may sell property under subsection (b) . . . of this section free and  
21 clear of any interest in such property of an entity other than the estate, only if—

- 22 (1) applicable non-bankruptcy law permits the sale of such property free and  
23 clear of such interest; ...  
24 (2) such entity consents;  
25 (3) such interest is a lien and the price at which such property is to be sold is  
26 greater than the aggregate value of all liens on such property;  
27 (4) Such interest is in bona fide dispute; or  
28 (5) such entity could be compelled, in a legal or equitable proceeding, to  
accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Section 363(f) of the Bankruptcy Code was drafted in the disjunctive. Thus, a debtor



1 need only meet the provisions of one of the five subsections of section 363(f) in order for a sale  
2 of property to be free and clear of all liens, claims and interests (defined collectively as  
3 “Encumbrances” in the Sale Order). The Debtors submit that one or more of the tests of  
4 Bankruptcy Code section 363(f) are clearly satisfied with respect to the Debtors’ proposed sale  
5 of the Purchased Assets to Purchaser free and clear of all Liens.  
6

7 **1. The Debtors’ Proposed Sale is Permissible Pursuant to 11 U.S.C. Section**  
8 **363(f)(2).**

9 Section 363(f)(2) of the Bankruptcy Code authorizes a sale to be free and clear of an  
10 interest if the interest holder consents to the sale. However, the “consent” of an entity asserting  
11 an interest in the property sought to be sold, as referenced in section 363(f)(2) of the Bankruptcy  
12 Code, can be implied if such entity fails to make a timely objection to the sale after receiving  
13 notice of the sale. In re Eliot, 94 B.R. 343, 345 (E.D. Pa. 1988).  
14

15 Purchaser is the only creditor the Debtors are aware of that assert any liens against any of  
16 the Purchased Assets, and Purchaser has consented to the sale of the Purchased Assets to  
17 Purchaser (or to a successful overbidder) free and clear of its Liens. If Purchaser is the winning  
18 bidder at the Auction (or if there is no Auction), Purchaser’s Liens will be satisfied in full by  
19 Purchaser’s inclusion of its outstanding secured debt as part of its purchase price paid at the  
20 Closing. If a successful overbidder is the winning bidder at the Auction, then in connection with  
21 the Closing, the full outstanding secured debt of Purchaser will be paid in full at the Closing out  
22 of the sale proceeds. In the event that there any other Lien holders, the Debtors request that the  
23 Bankruptcy Court approve the sale of the Purchased Assets to Purchaser (or to a successful  
24 overbidder) free and clear of all Liens of those parties who do not file a timely objection to the  
25 sale, by deeming all such parties to have consented to the sale pursuant to section 363(f)(2) of the  
26 Bankruptcy Code.  
27  
28

1 In addition to all of the foregoing, the Debtors submits that they have also satisfied at  
2 least one of the other possible conditions of section 363(f) for a free and clear sale to enable the  
3 Debtors to deliver the Purchased Assets to Purchaser (or to a successful overbidder) free and  
4 clear of all Liens.  
5

6 **2. The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. Section**  
7 **363(f)(3).**

8 Section 363(f)(3) of the Bankruptcy Code authorizes a sale to be free and clear of an  
9 interest if such interest is a lien and the price at which the property to be sold is greater than the  
10 aggregative value of all lens against the property. Here, since Purchaser is the only known  
11 secured creditor, and the purchase price to be paid by Purchaser (or a successful overbidder) is  
12 more than Radians is owed, the Debtors submit that the Court can approve the Debtors' proposed  
13 sale of the Purchased Assets free and clear of all Liens pursuant to the provisions of Section  
14 363(f)(3) of the Bankruptcy Code.  
15

16 **3. The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. Section**  
17 **363(f)(5).**

18 Section 363(f)(5) of the bankruptcy code permits a sale of property free and clear of liens  
19 and interests if "such entity could be compelled, in a legal or equitable proceeding, to accept a  
20 money satisfaction of such interest." 11 U.S.C. § 363(f)(5).  
21

22 Pursuant to 11 U.S.C. §363(f)(5), a trustee may sell property free and clear of any interest  
23 if the holder of that interest "could be compelled, in a legal or equitable proceeding, to accept a  
24 money satisfaction of such interest." 11 U.S.C. § 363(f)(5); P.K.R. Convalescent Centers, Inc. v.  
25 Commonwealth of Virginia, Dep't of Medical Assistance Serv. (In re P.K.R. Convalescent  
26 Centers, Inc.), 189 B.R. 90 (Bankr. E.D. Va. 1995) (allowing sale of nursing home assets under  
27 section 363(f)(5) over objection of the Department of Medical Assistance Service where its  
28

1 interest was reducible to a claim and subject to a hypothetical money satisfaction).

2 Section 363(f)(5) has generally been interpreted to mean that if, under applicable law, the  
3 holder of the lien or interest could be compelled to accept payment in exchange for its interest,  
4 the trustee (or debtor-in-possession) may take advantage of that right by replacing the holder's  
5 lien or interest with a payment or other adequate protection. Collier on Bankruptcy, ¶ 363.06 [6]  
6 (15th ed. rev. 2003) ("Collier"). Applicable nonbankruptcy law may recognize a monetary  
7 satisfaction when the lien holder is to be paid in full out of the proceeds of the sale or otherwise.  
8 Id. Thus, for example, a sale free of a first mortgage might be approved when the proceeds are  
9 sufficient to pay in full the first mortgage and the second mortgagee has consented to the sale.  
10

11 However, section 363(f)(5) does not require full payment to the lien or interest holder if  
12 the trustee can demonstrate the existence of another legal or equitable proceeding by which the  
13 holder may be compelled to accept less than full satisfaction of the secured debt. In re Grand  
14 Slam U.S.A., Inc., 178 B.R. 460, 461-62 (E.D. Mich. 1995) (holding that the "money  
15 satisfaction" language in section 363(f)(5) does not require full payment to the lien holder); In re  
16 Healthco Int'l Inc., 174 B.R. 174, 176-78 (Bankr. D. Mass. 1994) (construing "money  
17 satisfaction of such interest" to mean a payment constituting less than full payment of the  
18 underlying debt because any lien can always be discharged by full payment of the underlying  
19 debt pursuant to section 363(f)(3)); Scherer v. Federal National Mortgage Association (In re  
20 Terrace Chalet Apartments, Ltd.), 159 B.R. 821, 829 (Bankr. N.D. Ill. 1993).  
21  
22

23 Courts have held that chapter 11 cramdown is a typical "legal proceeding" by which an  
24 entity may be compelled to accept less than full money satisfaction and which will permit the  
25 sale of creditor's collateral free and clear of interest under section 363(f)(5). In re Gulf States  
26 Steel, Inc. of Alabama, 285 B.R. 497, 508 (Bankr. N.D. Ala. 2002)(holding that the liens or  
27 interests identified in the sale motion could be compelled to accept a money satisfaction in a  
28

1 cram down plan of reorganization in a chapter 11 case); Scherer v. Federal National Mortgage  
2 Association (In re Terrace Chalet Apartments, LTD.), 159 B.R. at 829 (finding that section  
3 1129(b)(2) cram down is such a provision); In re Perroncello, 170 B.R. 189 (Bankr. D. Mass.  
4 1994); Collier ¶ 363.06[6][a]. Thus, the trustee can sell property free and clear of a creditor's  
5 lien if it demonstrates it can cram down the creditor's interest pursuant to § 1129(b)(2).  
6

7 Likewise, the holder of a tax lien that would be subordinated under section 724 can be  
8 compelled to accept less than full payment. In re Grand Slam U.S.A., Inc., 178 B.R. at 461-62  
9 (holding that § 724(b)(2) is applicable for purposes of § 363(f)(5) because it creates a mechanism  
10 by which lien creditors are compelled to receive less than full payment of their interest); In re  
11 Healthco Int'l Inc., 174 B.R. 174, 176-78 (Bankr. D. Mass. 1994)(concluding that a trustee may  
12 sell property pursuant to section 363(f)(5) free of the county's tax lien lien); Collier, ¶  
13 363.06[6][a].  
14

15 In addition to the legal arguments set forth above, the ability of a debtor to "cram-down"  
16 a secured creditor under 11 U.S.C. Sec. 1129(b)(1) and (2) also constitutes a "legal proceeding"  
17 pursuant to which a secured creditor could be compelled to accept a money satisfaction. See, In  
18 re Grand Slam, U.S.A. Inc., 178 B.R. 460, 462 (E.D. Mich. 1995); 11 U.S.C. Sec.1129(b)(2)(A).  
19

20 Section 1129(b)(2)(A) allows cram-down of a secured creditor, provided that it receives  
21 "the indubitable equivalent" of its claim. A debtor can cram down a secured creditor if it  
22 demonstrates (1) the debtor is not unfairly discriminating against the secured creditor, 11 U.S.C.  
23 § 1129(b)(1); (2) it is acting in good faith, 11 U.S.C. § 1129(a)(3)-(b)(1); and (3) the secured  
24 creditor is receiving the actual value of its claim. 11 U.S.C. § 1129(b)(2)(A)(i)(II), 11 U.S.C. §  
25 1129(b)(2)(A)(iii), see also In re Sandy Ridge Dev. Corp., 881 F.2d 1346, 1350 (5th Cir.1989)  
26 (holding that "indubitable equivalent" of a secured creditor's interest is the actual value of the  
27 claim).  
28

1 In In re Hunt Energy Co., Inc., 48 B.R. 472, 485 (Bankr. N.D. Ohio, 1985), the court  
2 found that a lien which attaches to the proceeds of a sale would necessarily be reduced by  
3 subsequent valuation at a hearing under section 506(a) to meet the “indubitable equivalence”  
4 requirements of section 1129(b)(2)(A). Once section 1129(b)(2)(A) is satisfied, the lienholder  
5 would be compelled through the cram-down process to accept such money satisfaction as  
6 dictated by the cram-down provisions. Id.

8 All of the above requirements for cram down are met in these cases. The sale of the  
9 Purchased Assets to Purchaser (or to a successful overbidder) was negotiated and is being  
10 conducted in good faith. While the Debtors do not believe that there are any secured creditors  
11 with valid liens against the Purchased Assets other than Purchaser, if there are any, they are  
12 being treated fairly and in accordance with their respective lien priorities, so there is no unfair  
13 discrimination present in the proposed sale. Finally, any such secured creditors will receive the  
14 actual value of their secured claim as measured by section 506(a).

16 Based upon all of the foregoing, all creditors of the Debtors, including all secured  
17 creditors of the Debtors, could be compelled, in a legal or equitable proceeding, to accept a  
18 money satisfaction of their interest. The Debtors’ proposed sale of the Purchased Assets to  
19 Purchaser (or to a successful overbidder) should therefore be free and clear of all Liens pursuant  
20 to section 363(f)(5) of the Bankruptcy Code.

22 C. **The Bankruptcy Court Should Authorize the Debtors to Assume and Assign to**  
23 **Purchaser (or to a Successful Overbidder) All of the Designated Contracts that**  
24 **Purchaser (or to a Successful Overbidder) Desires.**

26 Barring exceptions not herein relevant, sections 365(a) and 1107(a) authorizes a debtor in  
27 possession, “subject to the Court’s approval, ... [to] assume or reject any executory contract or  
28 unexpired lease of the debtor.” A debtor in possession may assume or reject executory contracts

1 for the benefit of the estate. In re Klein Sleep Products, Inc., 78 F.3d 18, 25 (2d. Cir. 1996); In re  
2 Central Fla. Metal Fabrication, Inc., 190 B.R. 119, 124 (Bankr. N.D. Fla. 1995); In re Gucci, 193  
3 B.R. 411, 415 (S.D.N.Y. 1996). In reviewing a debtor in possession's decision to assume or  
4 reject an executory contract, a bankruptcy court should apply the "business judgment test" to  
5 determine whether it would be beneficial to the estate to assume it. In re Continental Country  
6 Club, Inc., 114 B.R. 763, 767 (Bankr. M.D. Fla. 1990); see also In re Gucci, 193 B.R. at 415.  
7 The business judgment standard requires that the court follow the business judgment of the  
8 debtor unless that judgment is the product of bad faith, whim, or caprice. In re Prime Motors  
9 Inns, 124 B.R. 378, 381 (Bankr. S.D. Fla. 1991), citing Lubrizol Enterprises v. Richmond Metal  
10 Finishers, 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986).  
11

12 Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign its executory  
13 contracts and unexpired leases, provided the debtor first assumes such executory contracts and  
14 unexpired leases in accordance with section 365(b)(1), and provides adequate assurance of future  
15 performance by the assignee. Pursuant to section 365(b)(1), assumption of executory contracts  
16 and unexpired leases requires a debtor to: (a) cure any existing defaults under such agreements;  
17 (b) compensate all non-debtor parties to such agreements for any actual pecuniary loss resulting  
18 from the defaults; and (c) provide adequate assurance of future performance under the contract or  
19 lease. 11 U.S.C. § 365(b)(1); see also In re Bowman, 194 B.R. 227, 230 (Bankr. D. Ariz. 1995);  
20 In re AEG Acquisition Corp., 127 B.R. 34, 44 (Bankr. C.D. Cal. 1991), aff'd 161 B.R. 50 (9th  
21 Cir. B.A.P. 1993). Pursuant to section 365(f)(1) of the Bankruptcy Code, a debtor may assign an  
22 executory contract or unexpired lease pursuant to section 365(f)(2) of the Bankruptcy Code  
23 notwithstanding any provision in such executory contract or unexpired lease that prohibits,  
24 restricts or conditions the assignment of such executory contract or unexpired lease.  
25  
26

27 The assumption and assignment of executory contracts furthers the goals of Chapter 11 of  
28

1 promoting reorganization by balancing the debtor's interest in maximizing the value of its estate  
2 against the contracting party's interest in receiving the benefit of its bargain and being protected  
3 against default by the debtor after assumption has occurred. In re Embers 86th Street, Inc., 184  
4 B.R. 892, 896 (Bankr. S.D.N.Y. 1995).

5  
6 By this Motion, the Debtors are seeking to assume and assign to Purchaser (or to a  
7 successful overbidder) all of the Debtors' executory contracts and unexpired leases that  
8 Purchaser (or a successful overbidder) desires. A schedule of all of the Debtors' known  
9 executory contracts and unexpired leases (the "Contracts and Leases Schedule"), along with the  
10 Debtors' belief as to all outstanding cure amounts owing by the Debtors to the other parties to  
11 those executory contracts and unexpired leases (the "Cure Amounts"), is attached as Exhibit "1"  
12 to the Current Greulich Declaration. Purchaser has not yet identified for the Debtors which of  
13 the Debtors' executory contracts and unexpired leases that Purchaser desires to have assigned to  
14 it (*i.e.*, the "Designated Contracts") if Purchaser is the winning bidder at the Auction (or if there  
15 is no Auction), and Purchaser is required to make that designation by one day prior to the  
16 Closing. If someone other than Purchaser is the successful bidder at the Auction, the Debtors  
17 will not know which of their executory contracts and unexpired leases the winning bidder will  
18 desire to have assigned to it until the winning bidder at the Auction makes that determination  
19 which the winning bidder will also be required to make by one day prior to the Closing.  
20

21  
22 As a result of the foregoing, by way of this Motion, the Debtors are seeking the Court's  
23 authority to assume and assign to Purchaser (or to a successful overbidder) all of the Debtors'  
24 executory contracts and unexpired leases that Purchaser (or a successful overbidder) wants to  
25 have assigned to it and to fix the required Cure Amounts that would need to be paid to the other  
26 parties to the executory contracts and unexpired leases to enable compliance with the provisions  
27 of Section 365(b)(1)(A) of the Bankruptcy Code at the Cure Amounts set forth in the Contracts  
28

1 and Leases Schedule unless the other parties to the executory contracts and unexpired leases file  
2 a timely objection to this Motion and the Court determines that the required Cure Amount is  
3 different than the amount set forth in the Contracts and Leases Schedule. The Debtors submit  
4 that none of the other parties to the executory contracts and unexpired leases have suffered any  
5 actual pecuniary loss resulting from any default by the Debtors so that no further payments  
6 beyond the proposed Cure Amounts are required to enable compliance with the provisions of  
7 Section 365(b)(1)(B) of the Bankruptcy Code. The Debtors therefore submit that any party that  
8 fails to file a timely objection to this Motion should be deemed to have consented to the Debtors'  
9 proposed Cure Amounts and pecuniary loss amounts and be forever barred from challenging the  
10 Debtors' proposed Cure Amounts and pecuniary loss amounts.  
11  
12

13 Purchaser (or any successful overbidder) will be required to file with the Court not later  
14 than one day prior to the Closing which of the Debtors' executory contracts and unexpired leases  
15 Purchaser (or any successful overbidder) has decided not to take an assignment of, in which case  
16 those executory contracts and unexpired leases will not be assumed and assigned to Purchaser (or  
17 a successful overbidder) at the Closing and, instead, will be deemed rejected effective as of the  
18 Closing.  
19

20 **E. The Debtors Request the Court to Waive the Fourteen-Day Waiting Periods Set**  
21 **Forth in Bankruptcy Rules 6004(h) and 6006(d).**

22 Bankruptcy Rule 6004(h) provides, among other things, that an order authorizing the use,  
23 sale or lease of property . . . is stayed until the expiration of fourteen days after entry of the Court  
24 order, unless the Court orders otherwise. Bankruptcy Rule 6006(d) has a similar provision with  
25 respect to an order approving of a debtor's assumption and assignment of unexpired leases and  
26 executory contracts.  
27  
28



1 For all of the reasons set forth above, the Debtors believe that selling the Purchased  
2 Assets to Purchaser (or a successful overbidder) in accordance with the timeline provided in the  
3 APA and the Bidding Procedures Order is in the best interests of the Debtors' estates, their  
4 creditors and shareholders. Closing the sale of the Purchased Assets as soon as possible will  
5 minimize the need for the Debtors to have to borrow additional funds from Purchaser for their  
6 business operations which would dilute the recovery for the Debtors' shareholders. In order to  
7 facilitate the most expeditious Closing possible, the Debtors request that the Sale Order be  
8 effective immediately upon entry by providing that the fourteen-day waiting periods of  
9 Bankruptcy Rule 6004(h) and 6006(d) are waived.  
10

11 **IV.**

12 **CONCLUSION**

13  
14 Based upon all of the foregoing, the Debtors respectfully requests that the Court enter the  
15 Sale Order and grant all of the other relief requested above in this Motion.

16 Dated: October 9, 2017

IRONCLAD PERFORAMNCE WEAR  
CORPORATION, *et al.*

17  
18 By: /s/ Ron Bender  
RON BENDER  
MONICA Y. KIM  
KRIKOR J. MESHEFEJIAN  
LEVENE, NEALE, BENDER,  
YOO & BRILL L.L.P.  
Proposed Attorneys for Debtors and  
Debtors in Possession  
19  
20  
21  
22  
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24  
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26  
27  
28

# EXHIBIT "A"

RON BENDER (SBN 143364)  
MONICA Y. KIM (SBN 211414)  
KRIKOR J. MESHEFEJIAN (SBN 255030)  
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Proposed Attorneys for Chapter 11 Debtors  
and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SAN FERNANDO VALLEY DIVISION**

In re:

IRONCLAD PERFORMANCE WEAR  
CORPORATION, a California corporation,

Debtor and Debtor in Possession.

In re:

IRONCLAD PERFORMANCE WEAR  
CORPORATION, a Nevada corporation,

Debtor and Debtor in Possession.

☒ Affects both Debtors

☐ Affects Ironclad Performance Wear  
Corporation, a California corporation only

☐ Affects Ironclad Performance Wear  
Corporation, a Nevada corporation only

Lead Case No.: 1:17-bk-12408-MB  
Jointly administered with:  
1:17-bk-12409-MB  
Chapter 11 Cases

**ORDER: (1) APPROVING SALE OF  
SUBSTANTIALLY ALL OF THE  
DEBTORS' ASSETS FREE AND  
CLEAR OF ALL ENCUMBRANCES; (2)  
APPROVING THE DEBTORS'  
ASSUMPTION AND ASSIGNMENT OF  
CERTAIN UNEXPIRED LEASES AND  
EXECUTORY CONTRACTS AND  
DETERMINING CURE AMOUNTS  
AND APPROVING THE DEBTORS'  
REJECTION OF UNEXPIRED LEASES  
AND EXECUTORY CONTRACTS  
WHICH ARE NOT ASSUMED; (3)  
WAIVING THE 14-DAY STAY  
PERIODS SET FORTH IN  
BANKRUPTCY RULES 6004(h) AND  
6006(d); AND (4) GRANTING  
RELATED RELIEF**

DATE: October 30, 2017  
TIME: 10:00 a.m.  
PLACE: Courtroom "303"  
21041 Burbank Blvd.  
Woodland Hills, CA

1 A hearing was held on October 30, 2017 (the "Sale Hearing"), for the Court to consider  
2 approval of the motion (the "Motion") filed by Ironclad Performance Wear Corporation, a  
3 California corporation, and Ironclad Performance Wear Corporation, a Nevada corporation, the  
4 debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned Chapter  
5 11 bankruptcy cases (collectively, the "Bankruptcy Cases"), seeking an order of the Court ("Sale  
6 Order") approving the Debtors' sale of substantially all of their assets to Radians Wareham  
7 Holding, Inc. ("Purchaser" or "Radians") in accordance with the terms of the APA ("APA")  
8 attached as Exhibit "A" to the Declaration of Geoffrey Greulich filed on September 11, 2017 as  
9 Docket Number 6 (the "Greulich Declaration") or to the highest or otherwise best overbidder  
10 selected at the Auction (defined below) free and clear of all Encumbrances (defined below). By  
11 way of the Motion, the Debtors also requested the Court's approval of the Debtors' assumption  
12 and assignment to Purchaser (or the successful overbidder) of those unexpired leases and  
13 executory contracts that Purchaser (or the successful overbidder) wishes to have assigned to it  
14 (defined in the APA as the "Designated Contracts") and to reject the balance of such unexpired  
15 leases and executory contracts effective as of the sale closing (the "Closing"). All capitalized  
16 terms which are not defined in this Sale Order but which are defined in the APA or the Motion  
17 shall be deemed to have the same definitions as set forth in the APA or the Motion. Appearances  
18 were made at the Sale Hearing as set forth on the record of the Court.

19 At a continued hearing held on September 25, 2017, the Court granted the Debtors' bid  
20 procedures motion by order entered on September 28, 2017 as Docket Number 71 (the "Bidding  
21 Procedures Order"). The Bidding Procedures Order was approved by the Debtors, Purchaser, the  
22 Official Committee of Unsecured Creditors (the "OCUC") and the Official Committee of Equity  
23 Holders (the "OCEH") that were appointed in these cases. The Bidding Procedures Order  
24 explained to prospective overbidders how a prospective overbidder could become qualified to

1 participate in the Auction and how the Auction would proceed in the event that there was one or  
2 more qualified overbidders.

3 In accordance with the Bidding Procedures Order, the Debtors conducted an Auction on  
4 October 30, 2017. \_\_\_\_\_ was the winning bidder at the Auction with a purchase  
5 price of \$\_\_\_\_\_. The Debtors, in consultation with the OCUC and the  
6 OCEH, determined that the \$\_\_\_\_\_ bid submitted by \_\_\_\_\_ at the Auction (the  
7 “Winning Bid”) was the highest and best bid submitted at the Action and should be approved by  
8 the Court.  
9

10 The Court, having considered the Motion and all pleadings filed by the Debtors in  
11 support of the Motion and all pleadings filed in response to the Motion; the statements,  
12 arguments and representations of the parties made at the Sale Hearing; and the entire record of  
13 these cases; and the Court, having determined that the relief sought in the Motion is in the best  
14 interests of the Debtors, their estates, their creditors and their shareholders, and that the legal and  
15 factual bases set forth in the Motion and presented at the Sale Hearing establish just cause for the  
16 relief granted herein; and all objections to the Motion, if any, having been withdrawn or overruled;  
17 and after due deliberation and sufficient good cause appearing therefor,  
18

19 **THE COURT HEREBY FINDS AND CONCLUDES THAT:<sup>1</sup>**

20 A. Jurisdiction and Venue. The Bankruptcy Court has jurisdiction to hear and determine  
21 the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter relates to the administration of  
22 the Debtors’ bankruptcy estates and is accordingly a core proceeding pursuant to 28 U.S.C. §  
23 \_\_\_\_\_  
24

25 <sup>1</sup> The findings of fact and conclusions of law set forth herein constitute the Bankruptcy Court's findings  
26 of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to these proceedings  
27 by Bankruptcy Rule 9014. To the extent any of the following findings constitute conclusions of law, they  
28 are adopted as such. To the extent any of the following conclusions of law constitute findings of fact,  
they are adopted as such.

1 157(b) (2) (A), (M), (N) and (O). Venue of these cases is proper in this District and in the  
2 Bankruptcy Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3 B. Statutory Predicates. The statutory predicates for the relief requested in the  
4 Motion are (i) Sections 105(a) and 363(b), (f), (k), (l) and (m), 365 of Title 11 of the United  
5 States Code (the “Bankruptcy Code”), (ii) Rules 2002(a)(2), 2002(c)(1) and (d), 6004 (a), (b),  
6 (c), (e), (f) and (h), 6006(a), (c) and (d), 9006, 9007, 9013 and 9014 of the Federal Rules of  
7 Bankruptcy Procedure, and (iii) Local Bankruptcy Local Rules 6004-1 and 9013-1.

9 C. Notice. The Debtors have provided good and sufficient notice with respect to the  
10 following: (i) the Motion and the relief sought therein, including the entry of this Sale Order and the  
11 transfer and sale of the Purchased Assets, (ii) the Auction and the Sale Hearing, (iii) the selection of  
12 the Winning Bid, and (iv) the assumption and assignment of the Designated Contracts and proposed  
13 cure amounts owing under such Designated Contracts (“Cure Amounts”); and no further notice of  
14 the Motion, the relief requested therein or the Sale Hearing is required. A reasonable opportunity to  
15 object and to be heard regarding the relief provided herein has been afforded to parties-in-interest.

17 D. Compliance with the Auction Procedures. The Auction process implemented by the  
18 Debtors was conducted in accordance with the Bidding Procedures Order and were fair, proper, and  
19 reasonably calculated to result in the best value received for the Purchased Assets. The Auction  
20 process afforded a full, fair, and reasonable opportunity for any party-in-interest to become a  
21 qualified bidder and to participate in the Auction. As demonstrated by (i) the testimony and/or other  
22 evidence proffered and adduced at the Sale Hearing and (ii) the representations of counsel made on  
23 the record at the Sale Hearing, the Debtors have conducted the Auction process in good faith, without  
24 collusion and in accordance with the Bidding Procedures Order.

26 E. Highest or Otherwise Best Bid. The Winning Bid constitutes the highest or otherwise  
27 best offer for the Purchased Assets, and will provide a greater recovery for the Debtors’ estates than  
28

1 would be provided by any other available alternative. The Debtors' determination that the Winning  
2 Bid constitutes the highest or otherwise best offer for the Purchased Assets constitutes a reasonable,  
3 valid and sound exercise of the Debtors' business judgment, and is in the best interests of the  
4 Debtors, their estates, their creditors and their shareholders. The consideration to be paid by  
5 Purchaser for the Purchased Assets is fair and reasonable, is the highest or otherwise best offer  
6 therefor, and constitutes reasonably equivalent value and fair consideration under the Bankruptcy  
7 Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, and the laws  
8 of the United States.  
9

10 F. Arm's Length Transaction. The APA and other documents and instruments (the  
11 "Transaction Documents") related to and connected with this transaction (the "Transaction") and the  
12 consummation thereof were negotiated and entered into by the Debtors and Purchaser without  
13 collusion, in good faith and through an arm's length bargaining process. Neither Purchaser nor any  
14 of its affiliates or representatives is an "insider" of the Debtors, as that term is defined in section  
15 101(31) of the Bankruptcy Code. None of the Debtors, Purchaser, or their respective representatives  
16 engaged in any conduct that would cause or permit the APA, any of the other Transaction  
17 Documents or the Transaction to be avoided under section 363(n) of the Bankruptcy Code, or have  
18 acted in any improper or collusive manner. The terms and conditions of the APA and the other  
19 Transaction Documents, including, without limitation, the consideration provided in respect thereof,  
20 are fair and reasonable, and are not avoidable and shall not be avoided, and no damages may be  
21 assessed against Purchaser or any other party, as set forth in section 363(n) of the Bankruptcy Code.  
22

23 G. Good Faith Purchaser. Purchaser has proceeded in good faith and without collusion  
24 in all respects in connection with the sale process, in that: (i) Purchaser, in proposing and proceeding  
25 with the Transaction in accordance with the APA, recognized that the Debtors were free to deal with  
26 other interested parties; (ii) Purchaser agreed to provisions in the APA that would enable the Debtors  
27  
28

1 to accept a higher and better offer; (iii) Purchaser complied with all of the provisions in the Auction  
2 and the Bidding Procedures Order applicable to Purchaser; (iv) all payments to be made by Purchaser  
3 and other agreements entered into or to be entered into between Purchaser and the Debtors in  
4 connection with the Transaction have been disclosed; (v) the negotiation and execution of the APA  
5 and related Transaction Documents were conducted in good faith and constituted an arm's length  
6 transaction; and (vi) the APA was not entered into, and the Transaction being consummated pursuant  
7 to and in accordance with the APA is not being consummated, for the purpose of hindering, delaying  
8 or defrauding creditors of the Debtors. Purchaser is therefore entitled to all of the benefits and  
9 protections provided to a good-faith purchaser under section 363(m) of the Bankruptcy Code.  
10 Accordingly, the reversal or modification on appeal of the authorization provided herein to  
11 consummate the Transaction shall not affect the validity of the Transaction or Purchaser's status as a  
12 "good faith" purchaser.  
13  
14

15 H. Justification for Relief. Good and sufficient reasons for approval of the APA and the  
16 other Transaction Documents and the Transaction have been articulated to the Bankruptcy Court in  
17 the Motion and at the Sale Hearing, and the relief requested in the Motion and set forth in this Sale  
18 Order is in the best interests of the Debtors, their estates, their creditors and their shareholders. The  
19 Debtors have demonstrated through the Motion and other evidence submitted at the Sale Hearing  
20 both (i) good, sufficient and sound business purpose and justification and (ii) compelling  
21 circumstances for the transfer and sale of the Purchased Assets as provided in the APA outside the  
22 ordinary course of business, and before, and outside of, a plan of reorganization, and such action is  
23 an appropriate exercise of the Debtors' business judgment and in the best interests of the Debtors,  
24 their estates, their creditors and their shareholders.  
25

26 I. Free and Clear. In accordance with sections 363(b) and 363(f) of the Bankruptcy  
27 Code, the consummation of the Transaction pursuant to the Transaction Documents will be a legal,  
28



1 valid, and effective transfer and sale of the Purchased Assets and will vest in Purchaser, through the  
2 consummation of the Transaction, all of the Debtors' right, title, and interest in and to the Purchased  
3 Assets, free and clear of all liens, claims, encumbrances, and other interests of any kind or nature  
4 whatsoever (collectively, "Encumbrances"). The Debtors have demonstrated that one or more of the  
5 standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. All holders  
6 of Encumbrances in the Purchased Assets are adequately protected by having their respective  
7 Encumbrances attach to the net sale proceeds attributable to the Purchased Assets to the extent any  
8 such Encumbrances existed as of the Petition Date and subject to the terms of such Encumbrances  
9 with the same validity, force and effect, and in the same order of priority, which such Encumbrances  
10 had against the Purchased Assets as of the Petition Date, subject to any rights, claims and defenses  
11 the Debtors or their estates may possess with respect thereto.  
12

13  
14 J. Prompt Consummation. The Debtors have demonstrated good and sufficient cause to  
15 waive the stay requirement under Bankruptcy Rules 6004(h) and 6006(d). Time is of the essence in  
16 consummating the Transaction, and it is in the best interests of the Debtors and their estates to  
17 consummate the Transaction within the timeline set forth in the Motion and the APA.  
18

19 K. Assumption of Executory Contracts and Unexpired Leases. The Debtors have  
20 demonstrated that it is an exercise of their sound business judgment to assume and assign the  
21 Designated Contracts to Purchaser in connection with the consummation of the Transaction, and the  
22 assumption and assignment of the Designated Contracts is in the best interests of the Debtors and  
23 their estates.  
24

25 L. Cure/Adequate Assurance. Purchaser has cured, or has provided adequate assurance  
26 of cure upon Closing, of any default existing prior to the Closing under any of the Designated  
27 Contracts, within the meaning of 11 U.S.C. § 365(b)(1)(A), by payment of the amounts set forth in  
28 the Contracts and Leases Schedule. Purchaser has provided or will provide adequate assurance of

1 future performance of and under the Designated Contracts within the meaning of 11 U.S.C. §  
2 365(b)(1)(C). Pursuant to 11 U.S.C. § 365(f), the Designated Contracts to be assumed by the  
3 Debtors and assigned to Purchaser under the APA shall be assigned and transferred to, and remain in  
4 full force and effect for the benefit of, Purchaser notwithstanding any provision in such Designated  
5 Contracts prohibiting their assignment or transfer. The Debtors have demonstrated that no other  
6 parties to any of the Designated Contracts has incurred any actual pecuniary loss resulting from a  
7 default prior to the Closing under any of the Designated Contracts within the meaning of 11 U.S.C. §  
8 365(b)(1)(B). Pursuant to 11 U.S.C. § 365(f), the Designated Contracts to be assumed by the  
9 Debtors and assigned to Purchaser at the Closing shall be assigned and transferred to, and remain in  
10 full force and effect for the benefit of, Purchaser notwithstanding any provision in such contracts or  
11 other restrictions prohibiting their assignment or transfer.  
12  
13

14 M. Rejection of Executory Contracts and Unexpired Leases. The Debtors have  
15 demonstrated that it is an exercise of their sound business judgment to reject all of their executory  
16 contracts and unexpired leases which are not part of the Designated Contracts effective as of the  
17 Closing.  
18

19 N. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at  
20 the Sale Hearing establish just cause for the relief granted herein.

21 **NOW THEREFORE, IT IS HEREBY ORDERED THAT:**  
22

23 1. The relief requested in the Motion is GRANTED and APPROVED in all respects to  
24 the extent provided herein.

25 2. All objections with regard to the relief sought in the Motion that have not been  
26 withdrawn, waived, settled, or otherwise dealt with as expressly provided herein and in the Bidding  
27  
28

1 Procedures Order, and all reservation of rights included in such objections, are overruled on the merits  
2 with prejudice.

3  
4 3. Pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code, the  
5 Transaction, including the transfer and sale of the Purchased Assets to Purchaser on the terms set forth  
6 in the APA, is approved in all respects, and the Debtors are authorized and directed to consummate  
7 the Transaction in accordance with the APA, including, without limitation, by executing all of the  
8 Transaction Documents and taking all actions necessary and appropriate to effectuate and  
9 consummate the Transaction (including the transfer and sale of the Purchased Assets) in consideration  
10 of the Purchase Price upon the terms set forth in the APA, including, without limitation, assuming and  
11 assigning to Purchaser the Designated Contracts.  
12

13 4. As of the Closing, (i) the Transaction set forth in the APA shall effect a legal, valid,  
14 enforceable and effective transfer and sale of the Purchased Assets to Purchaser free and clear of all  
15 Encumbrances, as further set forth in the APA and this Sale Order; and (ii) the APA, and the other  
16 Transaction Documents, and the Transaction, shall be enforceable against and binding upon, and not  
17 subject to rejection or avoidance by, the Debtors, any successor thereto including a trustee or estate  
18 representative appointed in the Bankruptcy Cases, and all other persons and entities.  
19

20 5. Subject to the fulfillment of the terms and conditions of the APA, this Sale Order  
21 shall, as of the Closing, be considered and constitute for all purposes a full and complete general  
22 assignment, conveyance, and transfer of the Purchased Assets and/or a bill of sale transferring all of  
23 the Debtors' rights, title and interest in and to the Purchased Assets to Purchaser. Consistent with, but  
24 not in limitation of the foregoing, each and every federal, state, and local governmental agency or  
25 department is hereby authorized and directed to accept all documents and instruments necessary and  
26  
27  
28

1 appropriate to consummate the transactions contemplated by the APA and approved in this Sale  
2 Order.

3  
4 6. Any person or entity that is currently, or on the Closing Date may be, in possession of  
5 some or all of the Purchased Assets is hereby directed to surrender possession of such Purchased  
6 Assets either to (a) the Debtors before the Closing or (b) to Purchaser or its designee upon the Closing.

7  
8 7. The transfer of the Purchased Assets pursuant to the Transaction Documents is a  
9 legal, valid, and effective transfer and shall, in accordance with sections 105(a) and 363(f) of the  
10 Bankruptcy Code, and upon consummation of the Transaction, including, without limitation, payment  
11 of the Purchase Price to the Debtors, vest Purchaser with all right, title, and interest in the Purchased  
12 Assets, free and clear of all Encumbrances.

13  
14 8. Following the Closing, no holder of any Encumbrance against the Debtors or the  
15 Purchased Assets shall interfere with Purchaser's respective rights in, title to or use and enjoyment of  
16 the Purchased Assets. All valid and perfected Encumbrances in the Purchased Assets shall attach to  
17 the net Purchase Price proceeds attributable to the Purchased Assets immediately upon receipt of such  
18 Purchase Price proceeds by the Debtors in the order of priority, and with the same validity, force and  
19 effect, which such Encumbrances had against such Purchased Assets as of the filing of the Bankruptcy  
20 Cases, subject to any rights, claims and defenses the Debtors and their estates may possess with  
21 respect thereto.

22  
23 9. Purchaser shall not be deemed, as a result of any action taken in connection with, or  
24 as a result of the Transaction (including the transfer and sale of the Purchased Assets), to: (i) be a  
25 successor, continuation or alter ego (or other such similarly situated party) to the Debtors or their  
26 estates by reason of any theory of law or equity, including, without limitation, any bulk sales law,  
27 doctrine or theory of successor liability, or similar theory or basis of liability; or (ii) have, de facto or  
28

1 otherwise, merged with or into the Debtors; or (iii) be a mere continuation, alter ego, or substantial  
2 continuation of the Debtors. Other than the Assumed Liabilities, Purchaser is not assuming any of the  
3 Debtors' debts.

4  
5 10. This Sale Order (i) shall be effective as a determination that, on Closing, all  
6 Encumbrances existing against the Purchased Assets before the Closing have been unconditionally  
7 released, discharged and terminated, and that the transfers and conveyances described herein have  
8 been effected, and (ii) shall be binding upon and shall govern the acts of all persons and entities. If  
9 any person or entity that has filed financing statements or other documents or agreements evidencing  
10 any Encumbrances against the Purchased Assets shall not have delivered to the Debtors before the  
11 Closing, in proper form for filing and executed by the appropriate parties, termination statements,  
12 instruments of satisfaction, releases of all Encumbrances which the person or entity has with respect to  
13 the Purchased Assets, then Purchaser and/or the Debtors are hereby authorized to execute and file  
14 such statements, instruments, releases and other documents on behalf of the person or entity with  
15 respect to such Purchased Assets.  
16

17  
18 11. The Closing, either by allowance of the outstanding amount of the secured debt owed  
19 to Purchaser existing at the time of the Closing as a credit bid, or by payment of such amount if there  
20 is a successful overbidder, shall constitute a complete satisfaction of all outstanding indebtedness  
21 owing by the Debtors to Purchaser. Following the Closing, Purchaser shall no longer have any  
22 allowed claim against the Debtors or their bankruptcy estates, and all funds that are part of the  
23 Debtors' bankruptcy estates shall be free and clear of any lien or claim of Purchaser.  
24

25 12. Upon the Closing, the Debtors are authorized and directed to assume, assign and/or  
26 transfer each of the Designated Contracts to Purchaser. In connection with the Closing, Purchaser  
27 shall pay to all non-Debtor parties to the Designated Contracts the cure amounts set forth in the  
28

1 Contracts and Leases Schedule for all of the Designated Contracts (the "Cure Amounts"), and  
2 Purchaser's payment of such Cure Amounts are deemed the necessary and sufficient amounts to  
3 "cure" all "defaults" with respect to the Designated Contracts under section 365(b) of the Bankruptcy  
4 Code. The payment of the applicable Cure Amounts (if any) to any third-party counterparty (a  
5 "Counterparty") to each of the Designated Contracts shall (i) effect a cure of all defaults existing  
6 thereunder, and (ii) compensate such Counterparty for any actual pecuniary loss resulting from any  
7 such default. Purchaser shall then have assumed the Designated Contracts and, pursuant to section  
8 365(f) of the Bankruptcy Code, the assignment by the Debtors of such Designated Contracts shall not  
9 be a default thereunder. After the payment of the relevant Cure Amounts, neither the Debtors nor  
10 Purchaser shall have any further liabilities to any Counterparty other than Purchaser's obligations  
11 under the Designated Contracts that accrue and become due and payable on or after the Closing Date.  
12 In addition, adequate assurance of future performance has been demonstrated by or on behalf of  
13 Purchaser with respect to the Designated Contracts within the meaning of sections 365(b)(1)(c),  
14 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.  
15  
16

17 13. Each non-Debtor party to a Designated Contract hereby is forever barred, estopped,  
18 and permanently enjoined from (i) raising or asserting against the Debtors or Purchaser, or the  
19 property of any of them, any assignment fee, acceleration, default, breach, or claim of pecuniary loss,  
20 or condition to assignment, arising under or related to the Designated Contracts, existing as of the date  
21 of the Sale Hearing, or arising by reason of the consummation of the Transaction contemplated by the  
22 APA, including, without limitation, the Transaction and the assumption and assignment of the  
23 Designated Contracts, including any asserted breach relating to or arising out of the change-in-control  
24 provisions in such Designated Contracts, or any purported written or oral modification to the  
25 Designated Contracts and (ii) asserting against Purchaser any claim, counterclaim, breach, or  
26  
27  
28

1 condition asserted or assertable against the Debtors existing as of the Closing or arising by reason of  
2 the transfer of the Purchased Assets, except for the Assumed Liabilities.

3  
4 14. Any provisions in any Designated Contracts that prohibit or condition the assignment  
5 of such Designated Contract or allow the Counterparty to such Designated Contract to terminate,  
6 recapture, impose any penalty, condition on renewal or extension or modify any term or condition  
7 upon the assignment of such Designated Contract, constitute unenforceable anti-assignment  
8 provisions that are void and of no force and effect with respect to the Debtors' assumption and  
9 assignment of such Designated Contract in accordance with the APA.  
10

11 15. The terms and provisions of this Sale Order, as well as the rights granted under the  
12 Transaction Documents, shall continue in full force and effect and are binding upon any successor,  
13 reorganized Debtors, or chapter 7 or chapter 11 trustee applicable to the Debtors, notwithstanding any  
14 such conversion, dismissal or order entry. Nothing contained in any chapter 11 plan confirmed in the  
15 Bankruptcy Cases or in any order confirming such a plan, nor any order dismissing the Bankruptcy  
16 Cases or converting the Bankruptcy Cases to a case under chapter 7 of the Bankruptcy Code, shall  
17 conflict with or derogate from the provisions of the APA, any documents or instruments executed in  
18 connection therewith, or the terms of this Sale Order. The provisions of this Sale Order and any  
19 actions taken pursuant hereto shall survive any conversion or dismissal of the Bankruptcy Case and  
20 the entry of any other order that may be entered in the Bankruptcy Case, including any order (i)  
21 confirming any plan of reorganization; (ii) converting the Bankruptcy Case from chapter 11 to  
22 chapter 7; (iii) appointing a trustee or examiner in the Bankruptcy Case; or (iv) dismissing the  
23 Bankruptcy Case.  
24  
25

26 16. The Transaction contemplated by the APA and other Transaction Documents are  
27 undertaken without collusion and in "good faith," as that term is defined in section 363(m) of the  
28

1 Bankruptcy Code. Purchaser is a good faith purchaser within the meaning of section 363(m) of the  
2 Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy  
3 Code. Accordingly, the reversal or modification on appeal of the authorization provided herein by this  
4 Sale Order to consummate the Transaction shall not affect the validity of the sale of the Purchased  
5 Assets to Purchaser.  
6

7 17. The failure to specifically include any particular provision of the APA or the other  
8 Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such  
9 provisions, it being the intent of the Bankruptcy Court that the Transaction, the APA and the other  
10 Transaction Documents be authorized and approved in their entirety. Likewise, all of the provisions  
11 of this Sale Order are non-severable and mutually dependent.  
12

13 18. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014, if applicable, or  
14 any other Local Bankruptcy Rule or otherwise, this Sale Order shall not be stayed for 14-days after the  
15 entry hereof, but shall be effective and enforceable immediately upon entry pursuant to Bankruptcy  
16 Rule 6004(h) and 6006(d). Time is of the essence in approving the Transaction (including the transfer  
17 and the sale of the Purchased Assets).  
18

19 19. The automatic stay pursuant to section 362 is hereby lifted with respect to the Debtors  
20 to the extent necessary, without further order of the Bankruptcy Court, to (i) allow Purchaser to deliver  
21 any notice provided for in the APA and Transaction Documents and (ii) allow Purchaser to take any  
22 and all actions permitted under the APA and Transaction Documents in accordance with the terms and  
23 conditions thereof.  
24

25 20. Unless otherwise provided in this Sale Order, to the extent any inconsistency exists  
26 between the provisions of the APA and this Sale Order, the provisions contained in this Sale Order  
27 shall govern.  
28



1           21.       The Bankruptcy Court shall retain exclusive jurisdiction to interpret, construe, and  
2 enforce the provisions of the APA and this Sale Order in all respects, and further, including, without  
3 limitation, to (i) hear and determine all disputes between the Debtors and/or Purchaser, as the case  
4 may be, and any other non-Debtor party to, among other things, the Designated Contracts concerning,  
5 among other things, assignment thereof by the Debtors to Purchaser and any dispute between  
6 Purchaser and the Debtors as to their respective obligations with respect to any asset, liability, or claim  
7 arising hereunder; (ii) compel delivery of the Purchased Assets to Purchaser free and clear of  
8 Encumbrances; (iii) compel the delivery of the Purchase Price or performance of other obligations  
9 owed to the Debtors; (iv) interpret, implement, and enforce the provisions of this Sale Order; and (v)  
10 protect Purchaser against (A) claims made related to any of the Excluded Liabilities, (B) any claims of  
11 successor or vicarious liability (or similar claims or theories) related to the Purchased Assets or the  
12 Designated Contracts, or (C) any Encumbrances asserted on or against Purchaser or the Purchased  
13 Assets.  
14  
15

16           22.       Nothing in this Sale Order shall be construed to impair or limit in any way the rights  
17 of the OCEH and the OCUC granted in the *Final Order: (I) Authorizing The Debtors To (A) Obtain*  
18 *Postpetition Financing Pursuant To 11 U.S.C. §§ 105, 361, 362 And 364, And (B) Utilize Cash*  
19 *Collateral Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364; (II) Granting Adequate Protection*  
20 *Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364; And (III) Granting Related Relief.*  
21  
22  
23  
24  
25  
26  
27  
28

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled **DEBTORS' MOTION FOR AN ORDER: (1) APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; (2) APPROVING OF DEBTORS' ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS AND DETERMINING CURE AMOUNTS AND APPROVING OF DEBTORS' REJECTION OF THOSE UNEXPIRED LEASES AND EXECUTORY CONTRACTS WHICH ARE NOT ASSUMED AND ASSIGNED; (3) WAIVING THE 14-DAY STAY PERIODS SET FORTH IN BANKRUPTCY RULES 6004(h) AND 6006(d); AND (4) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **October 9, 2017**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Bender rb@lnbyb.com
- Monica Y Kim myk@lnbrb.com, myk@ecf.inforruptcy.com
- Krikor J Meshefejian kjm@lnbrb.com
- S Margaux Ross margaux.ross@usdoj.gov
- United States Trustee (SV) ustpreion16.wh.ecf@usdoj.gov
- Sharon Z. Weiss sharon.weiss@bryancave.com, raul.morales@bryancave.com

**2. SERVED BY UNITED STATES MAIL:** On **October 9, 2017**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **October 9, 2017**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

### SERVED BY PERSONAL DELIVERY

Hon. Martin R. Barash  
United States Bankruptcy Court  
21041 Burbank Boulevard, Suite 342  
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

October 9, 2017

Lourdes Cruz

/s/ Lourdes Cruz

Date

Type Name

Signature

Ironclad Performance Wear (8300)  
Interested Parties

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Sleman  
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P. O. Box 2952  
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Ironclad Performance Wear Corporation  
File No. 8300  
Contracts Service List  
Service by U.S. Mail

Ace Hardware  
2222 Kensington St.  
Oak Brook, IL 60523-0000

Acklands Grainger  
123 Commerce Valley Dr., Suite 700  
Thornhill, Ontario, L3T 7W, Canada

Advantage Media Services  
29120 Commerce Center Drive #2  
Valencia, CA 91355-0000

Amazon  
410 Terry Ave. North  
Seattle, WA 98109-0000

AML United Limited  
29th Floor, Nanyang Plaza  
57 Hung To Road, Kwun Tong,  
Kowloon  
Hong Kong, China,

BIC Alliance  
P O Box 40166  
Baton Rouge, LA 70835-0000

Cabela's  
1 Cabela Dr.  
Sidney, NE 69160-0000

Dayup Global Co., Ltd.  
Phum Prey Sala, Sangkat Kakap  
Khan Posenchey, Phnom Penh  
855, Cambodia,

Design Gallery (Pvt.) Ltd.  
Plot #322/B, Medical Road,  
Helal Market, Uttarkhan, Dhaka  
Dhaka-1230, Bangladesh,

DESUN GARMENTS, LTD.  
89/1, Birulia Road, Savar, Dhaka  
Dhaka  
Savar-1340, Bangladesh,

DNOW  
PO Box 40985  
Houston, TX 77240-0000

Do It Best  
6502 Nelson Road  
Fort Wayne, IN 46803-0000

DRG Strategic, LLC - Bob Goldstein  
P O BOX 191981  
Dallas, TX 75219-0000

Duluth Trading  
PO Box 409170  
Belleville, WI 53508-0000

Emery Waterhouse  
7 Rand Rd.  
Portland, ME 04104-0000

Essendant (USSCO)  
1 Parkway North Blvd., Suite 100  
Deerfield, IL 60015-0000

Glenfir  
General French 1948  
Montevideo, Uruguay 11500

Grainger  
100 Grainger Parkway  
Lake Forest, IL 60045-0000

Huizhou Baijia Glove Co., Ltd.  
Diakali Mouza, Manigongjpara  
Savar, Dhaka, 1349, Bangladesh

Ka Hung Glove Industrial Co. Ltd.  
Fujian Quanzhou Jiacheng Leather  
Ka Hung Holdings BldgM Chi Feng Rd  
Quanzhou City, Fujian, 36200-0000

Konica Minolta Business Solutions  
100 Williams Drive  
Ramsey NJ 07446-0000

MARUSAN - MIMASU TSHUSHO CO.  
LTD.  
NO 1 QUEEN' ROAD CENTRAL  
HONG KONG  
CHINA,

Menards  
5101 Menard Dr.  
Eau Claire, WI 54703-0000

MERCINDO GLOBAL MANUFAKTUR  
JL. RAYA SEMARANG-BAWEN KM.29  
Semarang, Central Java  
50661, Indonesia,

Naayle Garments  
CD 388/389 Sector 16B FB Ind Area  
Karach, iSindh, Pakistan

NANTONG CHANGBANG GLOVES  
CO.  
Flat/RM 1602 Chit Lee Comm  
Bldg 30-36, Shau Kei Wan Road  
Hong Kong, China,

Orgill  
PO Box 140  
Memphis, TN 38101-0000

Orr Safety  
11601 Interchange Drive  
Louisville, KY 40229-0000

Pitney Bowes Credit Corp.  
P.O.Box 371887  
Pittsburg PA 15250-7887

POH  
12 Brennan Way  
Belmont, Western Australia 6104

PT Adira Semesta Industry  
Bihbul Raya 73, Kopo., Bandung  
West Java, 40228, Indonesia

PT JJ GLOVES INDO  
JL Ronggowarsito, Mlese, Ceper  
Bonded Zone, Klaten  
Central Java, Indonesia, 57463-0000

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PT. Eagle Glove Indonesia  
Desa Bayen Purwomatani Kalasan  
Sleman, Yogyakarta, 55571  
Indonesia,

R3 Safety aka Bunzl  
P.O. Box 270417  
Saint Louis, MO 63141-0000

Sam's Club  
Attn: General Merchandise Manager  
2101 SE Simple Savings Drive  
Bentonville, AR 72716-0000

Sees Global Inc.  
#612 Suntec City 307-2  
Sandaewon-dong, Jungwon-gu  
Seongnam, Kyunggi, KO, 46273-6000

Select (Nantong) Safety Products Co  
No. 198 Youyi Road (W)  
Jueguang, Rudong, Jiangsu  
226400, China,

Shur Sales  
3830 Winermere Street  
Englewood, CO 80110-0000

Snap-On  
PO Box 1410  
Kenosha, WI 53141-0000

Synetra  
1110 E Highway 114, Suite 200  
Southlake, TX 76092-0000

Trinet  
1100 San Leandro Blvd., Suite 400  
San Leandro, CA 93577-0000

True Value  
8600 W. Bryn Mawr Avenue  
Chicago, IL 60631-0000

WINSPEED SPORTS SHANGHAI CO.,  
LTD.  
858 MINGZHU ROAD  
SHANGHAI  
China, 00020-1702

WONEEL MIDAS LEATHERS  
JL GEMBOR RAYA DESA PASIRJAYA  
TANGERANG  
BANTEN, INDONESIA, 15135-0000

Worldwide  
PO Box 88607  
Seattle, WA 98138-0000

1920 Hutton Court  
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PO Box 857413  
Richardson, TX 75085-0000